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To: Becky Bechler  
From: Connie Brigman  
CC: Honorable Milton L. Mack, Arika Sinnott  
Date: Nov. 26, 2012  
Re: SB 539

**I. SB 539 allows a guardian or conservator for a minor or incapacitated adult who was appointed by a court in another jurisdiction to transfer their authority to Michigan.**

- ✓ A foreign guardianship or conservatorship exists when the court of another state found an individual to be incompetent or otherwise in need of protection and imposed a guardianship or conservatorship on that individual.
- ✓ Michigan has jurisdiction to issue an order so long as the incapacitated individual or minor is present in Michigan at the time that the petition is filed. (MCL 700.1301)
- ✓ Generally, the individual is present in Michigan because the guardian or conservator obtained permission from the appointing court to move the individual to our state. This sometimes happens because a guardian was appointed in another state in order to safely transfer the individual back to his or her home in Michigan. Or, the guardian and ward resided somewhere else, then moved to Michigan.

**II. What SB 539 changes.** Currently, Michigan requires a foreign guardian or conservator to petition and participate in a Michigan hearing in order to be appointed in Michigan. The Michigan petition and hearing simply duplicates the appointing state's petition and hearing. The expense of the second, duplicate hearing is charged to the ward's estate even when the ward's estate obtains no benefit from the second hearing.

**SB 539 eliminates the second, duplicate hearing.** It does not mandate a petition and hearing for a transfer of a foreign guardianship or conservatorship. SB 539 requires an application, acceptance of appointment, notice, waiting period for objections, and a mandatory hearing if there are timely objections.

**As recently noted in a Law Review Comment, Michigan is the only state without any transfer statute whatsoever for guardianships and conservatorships.** Other states either have the Adult Guardianship and Protective Proceeding Jurisdiction Act (34 states), or they have their own transfer statute in place.

**II. SB 539 gives a foreign guardian priority under section 5313.** Therefore, a foreign guardian or conservator who is qualified and in good standing with the appointing court will always be first in line to be appointed by a Michigan court. Once the guardian or conservator files an Acceptance of Appointment with a Michigan court, the individual and their family have a continuing right to challenge the appropriateness of the guardianship or conservatorship in a Michigan court under Michigan law.

### **III. Procedure**

- ✓ Application must certify that no guardian has been appointed in this state: no guardianship or conservatorship petition is pending in this state; and, the applicant is appointed, qualified, and serving in good standing in the appointing jurisdiction.
- ✓ Establish jurisdiction and venue.
- ✓ Provide authenticated copies of current order from appointing jurisdiction.
- ✓ Sign an Acceptance of Appointment. See sections 5214, 5307 and 5412(1) regarding Acceptance giving the court personal jurisdiction over the individual serving as guardian or conservator.
- ✓ Temporary Letters are issued. (Good for 28 days)
- ✓ Notice of Appointment with copy of Application mailed to interested persons. Procedure for objections stated in Notice.
- ✓ Foreign guardian or conservator has priority under sections 5212, 5313, and 5409 of probate code.
- ✓ Certificate of Mailing for Notice of Appointment filed with probate court indicating that notice given within 14 days of appointment. Probate court issues permanent Letters of Authority, or if objection received within 28 days a hearing is set.

### **MISCELLANEOUS CHANGES TO COURT RULES:**

- ✓ Amend MCR 5.125 to make an Application have the same interested persons as a petition for guardian or conservator.
- ✓ Amend MCR 5.403(A) to allow a court to appoint a temporary guardian pursuant to an Application to Transfer Foreign Guardianship.

**NEW COURT FORM TO BE DEVELOPED BY SCAO: Application for Appointment in Michigan by a Foreign Guardian/Conservator**